IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 2737 of 2006(A)

PETITIONER:

SAITHUM BEEVI,(FORMERLY ARABIC TEACHER, PALLISSERIKKAL L.P.SCHOOL, SASTHAMCOTTA), AGED 49 YEARS, DAUGHTER OF LATE BEEVI KUNJU, RESIDING AT PUNNAVILA PADINJATTATIL HOUSE, PALLISSERIKKAL, SASTHAMCOTTA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.TPM.IBRAHIM KHAN

RESPONDENTS:

1. **SALAHUDEEN, ARABIC TEACHER, PALLISSERIKKAL L.P.S., PALLISSERIKKAL.P.O, SASTHAMCOTTA, KOLLAM.**
2. **THE MANAGER, PALLISSERIKKAL L.P.SCHOOL, SASTHAMCOTTA, KOLLAM DISTRICT.**
3. **THE ASSISTANT EDUCATION OFFICER, SASTHAMCOTTA.**
4. **THE DISTRICT EDUCATION OFFICER, KOLLAM.**
5. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, DIRECTORATE OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**
6. **THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTIONS (ACADEMIC), KERALA, THIRUVANANTHAPURAM.**
7. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.A.ABRAHAM for R1
BY GOVERNMENT PLEADER for R3,R4,R5,R6 & R7

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT DTD. 30/08/2005 OF THIS HONOURABLE COURT IN ORIGINAL PETITION O.10642 OF 2005 P.

EXT.P2: COPY OF THE PETITION NO.NIL DTD. 15/07/2003 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P3: COPY OF THE FABRICATED RELINQUISHMENT LETTER NO.NIL DTD. NIL ALLEGED TO HAVE BEEN SENT BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P4: COPY OF THE FABRICATED RELINQUISHMENT LETTER NO.NIL DTD. NIL ALLEGED STO HAVE BEEN SENT BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P5: COPY OF THE GOVT. ORDER G.O.(RT) 6041/05/GEN. DTD. 29/12/05 ISSUED BY 7TH RESPONDENT.

EXT.P6: COPY OF THE JUDGMENT DTD. 20/06/2002 OF THIS HONOURABLE COURT IN ORIGINAL PETITION NO.7943 OF 2001(U).

EXT.P7: COPY OF THE LETTER NO.C 1770/2003 DTD. 12/06/2003 SENT BY THE THIRD RESPONDENT TO THE 2ND RESPONDENT.

EXT.P8: COPY OF THE COMPLAINT NO.NIL DTD. 13/01/2003 SUBMITTED BY THE PETITIONER BEFORE THE SENIOR SUPERINTENDENT OF POST OFFICES, DELHI.

EXT.P9: COPY OF THE LETTER NO.L2/1-483/02 DTD. 26/03/2003 ISSUED BY THE SENIOR SUPERINTENDENT OF POST OFFICES, DELHI NORTH.

EXT.P10; COPY OF THE COMPLAINT DTD. 12/02/2003 SUBMITTED BY THE PETITIONER BEFORE THE POST MASTER GENERAL, NEW DELHI.

EXT.P10(A): COPY OF THE LETTER NO.B-11 (PRS(P) 02-03/A DTD. 13/02/2003 ISSUED BY THE POST MASTER GENERAL, NEW DELHI.

WPC.NO.2737/2006 A

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE ORDER NO.F.454564/03/DPI/K.DIS. DTD.10/10/2003.

EXT.R1(B): COPY OF THE LETTER NO.VI-79379/04/DPI DTD. 29/10/2004.

EXT.R1(C): COPY OF THE ORDER G.O.(RT) NO.242/05/G.EDN. DTD. 17/01/2005.

EXT.R1(D): COPY OF THE ORDER NO.K.DIS/F4/67253/04 DTD. 28/03/2005.

EXT.R1(E): COPY OF THE ORDER NO.C/189/06/K.DIS. DTD. 27/01/06.

EXT.R1(F): COPY OF THE ORDER NO.K.DIS.P4/29285/2006 DTD. 16/06/2006.

EXT.R1(G): COPY OF THE APPOINTMENT ORDER DTD. 05/06/2002 WITH ENDORSEMENT OF AEO NO.C 3014/06/K.DIS. DTD. 22.7.2000.

EXT.R1(H): COPY OF THE EVELOPE.

EXT.R1(I): COPY OF THE RELINQUISHMENT LETTER.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE TELEPHONE BILL DTD. NIL.

EXT.R2(B): COPY OF THE ORDER OF APPOINTMENT DTD. 24/01/2001.

EXT.R2(C): COPY OF THE MEMO OF APPOINTMENT DTD. 24/01/2001.

EXT.R2(D): COPY OF THE ACKNOWLEDGMENT CARD DTD. 24/01/2001.

EXT.R2(E): COPY OF THE MEMO OF APPOINTMENT DTD. 06/02/2001.

EXT.R2(F): COPY OF THE ACKNOWLEDGMENT CARD DTD. 06/02/2001.

EXT.R2(G): COPY OF THE APPOINTMENT ORDER DTD. 30/12/2002.

EXT.R2(H): COPY OF THE ACKNOWLEDGMENT CARD DTD. 26/12/2002.

EXT.R2(I): COPY OF THE LETTER OF THE PETITIONER DTD. NIL.

EXT.R2(J): COPY OF THE AGREEMENT OF THE MANAGER DTD. 11/02/2003.

EXT.R2(K): COPY OF THE LETTER OF THE DIRECTOR DTD. 29/10/2004.

/TRUE COPY/

P.S.TO JUDGE

KSS

Antony Dominic, J.

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W.P(C).No.2737 of 2006

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Dated this the 6TH day of August, 2007.

JUDGMENT

This Writ Petition is filed seeking to quash Ext.P5 order issued by the seventh respondent and to direct to reconsider Ext.P7 by providing a reasonable opportunity to the petitioner to substantiate her contentions regarding the genuineness of Exts.P3 and P4. Petitioner is also seeking a declaration that she is entitled to reappointment as Arabic Teacher in the School of the second respondent, being a claimant under Rule 51A of Chapter XIV A of Kerala Education Rules (for short "K.E.R.").

2. Petitioner had worked as Arabic Teacher in the School of the second respondent during 10/1985 to 9/12/1985 and 13/1/1988 to 15/3/1988 and her appointment was also

approved. After her discharge from service, there arose a regular vacancy of Arabic Teacher in 2000 and without any intimation as required under Rule 51A of Chapter XIV A of K.E.R., first respondent was appointed to that post. The Assistant Education Officer (A.E.O.) refused approval for the appointment and the petitioner filed a Writ Petition before this Court claiming that she should be appointed in the vacancy mentioned above. The case was disposed of by Ext.P6 judgment recording the submission of the Government Pleader that the A.E.O. had declined approval of the appointment of the first respondent. It was directed that the A.E.O. shall ensure that the Manager appoints the petitioner in the said vacancy. It was also clarified that the direction issued was without prejudice to the rights of respondents 1 and 2 to challenge the order of the A.E.O. Before the appropriate forum.

3. Following Ext.P6 judgment of this Court, A.E.O. issued Ext.P7 order directing the Manager to appoint the petitioner recognising her claim under Rule 51A of Chapter XIV A of K.E.R. and to report compliance. Immediately thereafter, the Manager filed an appeal against Ext.P7 order, which was disposed of by the Director of Public Instructions (D.P.I.) by Ext.P13 order

allowing the appeal. The main contention raised was that the petitioner had relinquished her claim under Rule 51A and it was therefor that the D.P.I. had directed verification of the genuineness of the relinquishment made by the petitioner.

4. Aggrieved by the adverse appellate order passed by the D.P.I., petitioner filed a revision before the Government, which was rejected by order dated 17.1.2001. Challenging the order of the Government, petitioner filed W.P.(C). No.10642 of 2005 before this Court which was disposed of by Ext.P1 judgment. In Ext.P1 judgment, this Court issued the following directions:

> "1. Exts.P8 and P10 will stand quashed. Government is directed to reconsider the issues decided as per Ext.P8 and take a fresh decision, after hearing the petitioner, the 1st respondent, the Manager and anybody else who, according to the Government also is to be heard in the matter. Government will allow reasonable opportunity to the petitioner and the 1st respondent to substantiate their respective contentions regarding the genuineness of the relinquishment letters and take fresh decision within a maximum period of four months from the day the parties produce a copy of this judgment before the Government.

2. The 3rd respondent shall grant provisional approval to the appointment given to the 1st respondent and thereby facilitate payment of salary to him for the period 22.11.2000 till 22.8.2005. It is made clear that the above approval will be provisional and subject to the result of the final decision which the Government takes in the matter pursuant to this judgment and that the 1st respondent will not be entitled to claim any right merely on account of the above approval.

3. The concerned respondents will ensure that there is compliance with the directions in favour of the 1st respondent within a maximum period of one month from the day a copy of this judgment is produced before them."

In pursuance to the aforesaid directions in Ext.P1, Government reconsidered the genuineness of the relinquishment made by the petitioner and finding that the relinquishment letters are to be treated as genuine, it was held that the petitioner cannot make a preferential claim for the post. On that basis, the appointment of the first respondent was directed to be approved. It is seeking to quash Ext.P5 and for consequential reliefs that this Writ Petition has been filed by the petitioner.

5. In the counter affidavit filed by the Manager, the main contention urged is that the relinquishment made by the petitioner was genuine and therefore he was justified in acting upon the same. It is also contended that irrespective of such relinquishment, the Manager had discharged his obligation under Rule 51A of K.E.R. by issuing appointment orders to the petitioner on two occasions. According to the Manager, the appointment orders were sent to the last known address of the petitioner and one such order was redirected to her Delhi address and still the appointment orders were returned by the Postal Authorities. The Manager also refers to Exts.P8 and P9 complaints made by the petitioner to the Postal Authorities in Delhi for having not received the communications which were sent by the Manager and according to the Manager, this itself proves that the appointment orders were in fact dispatched by him. Learned counsel for the first respondent also reiterates the contentions of the Manager and supports him. According to him, there is nothing to indicate that the Manager was notified of the Delhi address of the petitioner and therefore the Manager did what best he could in the circumstances and therefore the

Manager cannot be faulted. According to the first respondent also, since the petitioner had relinquished her right under Rule 51A of K.E.R., there is no substance in the plea raised.

6. It is argued by the counsel for the writ petitioner that the relinquishment relied on against her is invalid and unenforcible. According to the counsel, it is a fabricated document and it does not satisfy the requirements of Rule 51 A of K.E.R. For this purpose, counsel also places reliance on the judgments of this Court in **Lakshmikutty Amma** v. **Vijayalakshmikutty** - 1992(2) K.L.T. 341 and **Nalini** v. **State of Kerala** - 2001(2) K.L.T. 273. This argument of the counsel is resisted by the counsel for the second respondent by contending that this is a an argument now raised by the petitioner for the first time and that in view of Exts.P6 and P1 judgments rendered by this Court on the Writ Petitions filed by the petitioner herself, she cannot raise this plea. It is also contended that even in the absence of the relinquishment, Manager having discharged his obligations by issuing appointment orders on two occasions, petitioner cannot have any surviving grievance.

7. In so far as the contention of the counsel for the writ

petitioner regarding the invalidity of the relinquishment is concerned, it is noticed that this was not the contention raised by the petitioner in the previous Writ Petitions. Even in Ext.P1, the only issue that was canvassed was regarding the genuineness of the relinquishment letters. It was on that basis that this Court remitted the matter back to the Government allowing the petitioner an opportunity to substantiate her contention regarding the genuineness of the relinquishment letters. Therefore, petitioner having not urged this contention, counsel for the first respondent is justified in his submission, it is not open to the petitioner to raise the plea that the relinquishment is invalid for the reason that it does not satisfy the requirements under Rule 51 A of KE.R.

8. In fact, counsel for the writ petitioner proceeded to contend that Ext.P5 order issued by the Government in pursuance to Ext.P1 judgment of this Court also is perverse. According to him, the findings are inconsistent with the material available before the Government and on that ground also it needs to be interfered with.

9. I have gone through Ext.P5 order. In Ext.P5 order,

Government have taken into account all relevant aspects and have come to a factual finding that the relinquishment in question was genuine. In fact, the Government had also drawn support to their conclusion from a report of the Vigilance Wing of the office of the D.P.I., which also verified the signature of the petitioner. Further, it is seen that the author of Ext.P4 himself had verified the records and was convinced that the signatures of the petitioner in the relinquishment letters were identical to those in the acquittance roll and the attendance marked at the time of hearing held on 15.11.2005. In the light of the factual findings arrived at by the Government in Ext.P5, I am not prepared to accept the contention of the writ petitioner that Ext.P5 is to be interfered with on any ground.

10. Be that as it may, it is the submission of the counsel for the Manager that irrespective of the relinquishment letters, the Manager having discharged his obligation under Rule 51 A of Chapter XIV A of K.E.R. as laid down in Note 2 thereof, situation did not warrant interference. It is true that appointment orders produced as Ext.R2 series were addressed to local address of the petitioner. It is not the petitioner's case that she was not residing

at New Delhi or that she had furnished her Delhi address to the Manager. In such circumstances, the Manager cannot be faulted for having forwarded the appointment orders to the last known address of the petitioner. The fact that the Manager had forwarded the appointment orders is supported the petitioner's own complaint Ext.P8 to the Postal Authorities, New Delhi where she is complaining of the non-receipt of the communications issued by the Manager. Therefore, on facts, it can be seen that the Manager had issued orders of appointment on two occasions and that these orders were returned by the Postal Authorities even after redirecting the same to the Delhi address. In such circumstances, especially when the petitioner had not notified the Manager of her present residential address, the Manager cannot be said to have not complied with the requirements of Rule 51 A of K.E.R. If that be so, the appointment order issued to the first respondent on the failure of the petitioner to respond to the orders of appointment issued in her favour, cannot be faulted.

11. Therefore, in any view of the matter, Ext.P5 is not invalid nor is there any circumstance warranting interference with the appointment order issued in favour of the first respondent.

In the light of my above conclusions, the Writ Petition lacks merit and is only to be dismissed. I do so.

Antony Dominic,
Judge.

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